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Paper No. 11

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MAY 17, 2000

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In re Application of
Sutton
Application No. 09/050,796
Filed: March 30, 1998
Attorney Docket No. 16529-2-2US

DECISION ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(a), filed May 3, 1999. The petition will be treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment because petitioner asserts that a proper reply was timely filed and that the application never went abandoned.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

This application was filed without the small entity filing fee. As a result, A Notice To File Missing Parts was mailed on November 6, 1998. This set a 2 month period to submit the filing fee and missing parts surcharge. This Office asserted that the application became abandoned on January 7, 1999 because no reply was received. A Notice of Abandonment was mailed on April 20, 1999.

Petitioner states that the filing fee, surcharge, and a 3 month extension of time with required fee were filed in the Office on April 12, 1999 (certificate of mailing date, April 6, 1999).¹ To support this position, petitioner has provided a copy of the mailing with an April 6, 1999 certificate of mailing and an April 12, 1999 date stamp from OIPE (Office of Initial Patent Examination) affixed thereon. In addition, petitioner has provided a copy of the itemized postcard receipt listing "Transmittal Letter - Response to Notice of Missing Parts (orig. + 2) w/Petition to Extend time for 3 months (original +2) and a copy

¹ Petitioner authorized the Office to charge any necessary fees to Deposit Account No. 20-1430 in the reply to the Notice to File Missing Parts.

of Notice of Missing Parts" which shows an April 12, 1999 OIPE date stamp.

The Office finds this showing to be persuasive evidence that petitioner filed a proper response to the Notice of Missing Parts on April 12, 1999 (certificate of mailing date, April 6, 1999). This reply, because it was sent with a valid certificate of mailing, is considered timely under 37 CFR 1.8(b). Therefore, the Notice of Abandonment was mailed in error. The Office apologizes for any inconvenience occasioned by this error.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Pursuant to petitioner's authorization, Deposit Account No. 20-1430 was charged \$435.00 for a three month extension of time, \$65.00 for the missing parts surcharge, \$395 for the small entity filing fee, \$41.00 for an additional claim, and \$55.00 for the petition to revive an unavoidably abandoned application.

As the petition to withdraw the holding of abandonment is a no fee petition, Deposit Account No. 20-1430 will be refunded the \$55.00 petition fee.

This application file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.


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for Patent Policy and Projects